

**Department of State Health Services
Council Agenda Memo for State Health Services Council
September 5-6, 2012**

Agenda Item Title: Amendment to a rule concerning the Preparedness Coordinating Council

Agenda Number: 5.e

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The DSHS Community Preparedness Section in the Prevention and Preparedness Division is responsible for providing staff support to the Preparedness Coordinating Council (PCC). The section provides public health leadership and improves the health and well-being in Texas by promoting health, preventing disease and injury, and protecting and effectively responding to health emergencies, including bioterrorism, infectious disease outbreaks, and natural disasters. The section provides these services by coordinating, standardizing, and centralizing resources and planning efforts.

The source of funding for the PCC is through federal funds from Public Health Emergency Program and the Hospital Preparedness Program grants. Each year budget is allocated from these grants for the cost to convene the PCC.

Summary:

The purpose of the amendment is to clarify the PCC purpose, refine the PCC tasks, and clarify the membership total composition. The review of the rule complies with the four-year rule review as required by the Government Code, Section 2001.039.

The PCC advises and assists as a multidisciplinary strategic review forum concerning topics related to preparedness, response, recovery, and mitigation activities in Texas at the state level as they pertain to Emergency Support Function (ESF)-8 (Public Health and Medical). The PCC assists DSHS by providing strategic guidance to promote better consensus and coordination of state and local efforts to improve public health and medical preparedness.

Key Health Measures:

The PCC provides recommendations to assist DSHS in improving the quality of services through its planning and response efforts related to public health incidents. The membership of the PCC reflects a broad spectrum of subject matter experts from many disciplines, including medical, emergency management, funeral, volunteer aid organizations, and academics. The PCC reviews and comments on DSHS preparedness plans, increasing the effectiveness of the planning activities.

It is expected that the rule will allow the committee to carry out these responsibilities in an efficient and accountable manner by providing operating standards for committee meetings and membership. The outcome of the rule will be measured by the committee's completion of the statutory requirements concerning frequency of meetings, public testimony at meetings, and reports to DSHS.

Summary of Input from Stakeholder Groups:

The PCC has discussed rules and bylaws in their meetings since April 20, 2009. These discussions resulted in the decision to revise rules. By late 2011, consensus had been reached on the rule revisions. The proposed revised rules were sent to all PCC members and stakeholders, including local health departments, DSHS Health Service Region offices, and Trauma Service Area Regional Advisory Councils for comment. Comments addressed references to public health preparedness capabilities, the scope of audience for PCC advice, composition of the PCC, participation on subcommittees by PCC officers, attendance requirements, voting by ad hoc members and by proxies, deadlines for producing minutes, and reimbursement for travel expenses. Comments were discussed at the January 23, 2012, meeting of the PCC.

Stakeholders will have an additional opportunity for comment on the rule when it is published in the *Texas Register* for a 30-day comment period.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #5.e.

Approved by Assistant Commissioner/Director:		Lucina Suarez, Ph.D., Acting Assistant Commissioner for Prevention and Preparedness Services Division	Date: 8/20/2012
Presenter: Bruce Clements, MPH	Program:	Director, Community Preparedness Section	Phone No.: 776-7126
Approved by CCEA:		Carolyn Bivens	Date: 8/20/12

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 2. Emergency Preparedness
Amendment §2.1

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department), proposes an amendment to §2.1, concerning the Preparedness Coordinating Council (PCC).

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, §11.016, which authorizes the department to establish advisory committees; and Title 42 United States Code, §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department advice on public health preparedness. The PCC is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 2.1 has been reviewed and the department has determined that reasons for adopting the section continues to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

Amendments to §2.1 clarify the responsibilities of the PCC in state-level and national preparedness, and modify wording and punctuation of the rule. References to the State Health Services Council was removed and replaced with the department in the rules.

Specifically, subsection (c) defines the purpose of the PCC, including multidisciplinary strategic review forum and the role of the PCC related to the National Response Framework, Annex Emergency Support Function (ESF)-8 concerning public health and medical, in providing the structure for coordinating interagency support for response to an incident. Subsection (d) identifies the PCC for providing guidance to better coordination between state and local efforts to carry out strategic and operational tasks as assigned by the department. Amendments to subsection (e) remove time constraints governing the PCC's continuance/abolishment, while clarifying its division of membership between department staff and external membership. The PCC composition and appointment, terms of service, meeting quorum requirements and expectations of the membership are established in the amendments to subsections (g), (h) and (i). Subsection (j) adds that the department or contractors shall provide support for the PCC. Subsection (k) reemphasizes the PCC's commitment to consider the needs of the population with functional and access needs in deliberations and that the department staff or its contractors will take the minutes of the meetings. References to subcommittees and membership were deleted in subsections (l) - (n).

FISCAL NOTE

Bruce Clements, Director, Community Preparedness Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Clements has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Clements has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to better prepare the state to respond to public health emergencies.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENTS

Comments on the proposal may be submitted to Priscilla Boston, Community Preparedness Section, Prevention and Preparedness Division, Mail Code 1926, Department of State Health

Services, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 776-6695 or by email to. Priscilla.Boston@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §11.016, which authorizes the Health and Human Services Commission to establish advisory committees; Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department advice on public health preparedness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapters 11 and 1001; and Government Code, Chapters 531 and 2001.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No Change.) = No changes are being considered for the designated subdivision

§2.1. Preparedness Coordinating Council.

(a) The Preparedness Coordinating Council (PCC) **[council]**.

(1) The PCC **[Preparedness Coordinating Council (PCC)]** shall be appointed under and governed by this section.

(2) (No change.)

(b) (No change.)

(c) Purpose. The purpose of the PCC is to advise and assist the Department of State Health Services (department) as a multidisciplinary strategic review forum concerning topics related to preparedness, response, recovery, and mitigation activities in Texas at the state-level as they pertain to Emergency Support Function (ESF)-8 (Public Health and Medical). **[provide advice and assistance to the State Health Services Council (council) and the Department of State Health Services (department) in coordinating efforts to prepare the State of Texas for bioterrorism attacks, other infectious disease outbreaks, and additional public health threats and emergencies.]**

(d) Tasks.

(1) The PCC will assist the department by providing strategic guidance to promote better consensus and coordination of state and local efforts to improve public health and medical preparedness. **[shall advise the council concerning rules relating to major public health preparedness issues.]**

(2) The PCC shall carry out any other tasks assigned by the department as part of department's strategic and operational planning processes. **[will assist the department and the council in coordinating preparedness and response planning and expenditures; improving disease surveillance and detection; developing epidemic response capabilities; and addressing other public health emergency activities related to the department.]**

[(3) The PCC shall carry out any other tasks assigned by the council.]

(e) **[(f)]** Composition. The PCC shall be composed of no fewer than 18 external members and no more than six ad hoc internal department members, so long as total membership does not exceed 24 total members. **[The PCC shall be composed of no more than 24 members.]**

(1) The composition of the external membership [PCC] shall reflect a broad spectrum of key preparedness partners.

(2) The external members of the PCC shall be appointed by the Executive Commissioner of the Health and Human Services Commission (commission).

[(e) PCC abolished. By January 1, 2011, the Executive Commissioner of the Health and Human Services Commission will initiate and complete a review of the PCC to determine whether the PCC should be continued, consolidated with another council, or abolished. If the PCC is not continued or consolidated, the PCC shall be abolished on that date.]

(f) [(g)] Terms of office. The term of office of each member shall be six [6] years.

[(1)] Members shall be appointed for staggered terms so that the terms of six members will expire on December 31 of each even-numbered year.

[(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.]

(g) [(h)] Officers. The PCC shall select from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer shall serve until December 31 of each even-numbered year. The assistant presiding officer shall serve until December 31 of each odd-numbered year. Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is elected by the PCC.

(2) The presiding officer shall preside at all PCC meetings which he or she attends, call meetings in accordance with this section, appoint subcommittees of the PCC as necessary, and cause proper reports to be made to the department [council]. The presiding officer may serve as an ex-officio member of any subcommittee of the PCC.

(3) If the office of presiding officer or assistant presiding officer becomes vacant, it may be filled by vote of the PCC.

(4) A member shall serve no more than two consecutive terms as presiding officer or assistant presiding officer.

(5) The PCC may reference its officers by other terms, such as chairperson and vice-chairperson.

(h) [(i)] Meetings. The PCC shall meet [only] as necessary as determined by the department, but no less than quarterly, to conduct [PCC] business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the PCC.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact PCC members to determine availability for a meeting date and place.

(3) The PCC is not a "governmental body" as defined in the Open Meetings Act.

(4) Each member of the PCC shall be informed of a PCC meeting at least five working days before the meeting.

(5) A simple majority of the appointed external members of the PCC shall constitute a quorum for the purpose of transacting official business.

(6) The PCC is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each PCC meeting shall include an opportunity for new business or for any member to address the PCC on matters relating to PCC business. **[any person to address the PCC on matters relating to PCC business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.]**

(i) [(j)] Attendance. Members shall attend PCC meetings as scheduled. **[Members and subcommittee members shall attend meetings of subcommittees to which the members and subcommittee members are assigned.]**

(1) A member shall notify the **[presiding officer or]** appropriate department staff or presiding officer if he or she is unable to attend a scheduled meeting.

(2) PCC members who anticipate the inability to attend or have the need to be represented by an alternate for more than half of the PCC and subcommittee meetings in a 12-month period, should notify their agency of the need to nominate a replacement representative for the duration of their term. **[It shall be grounds for removal from the PCC if a member or subcommittee member cannot discharge the member's duties for substantial part of the term for which the member is appointed because of illness or disability, absence from more than half of the PCC and subcommittees meetings during a calendar year, or absence from at least three consecutive PCC meetings.]**

(3) The validity of an action of the PCC is not affected by the fact that it is taken when a ground for removal of a member exists.

(j) [(k)] Staff. Staff support for the PCC shall be provided by the department or its contractors.

(k) [(l)] Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any formal statement, recommendation, or agency level concern **[action]** taken by the PCC must be approved by a majority vote of the external members present once a quorum is established.

(2) Each external member shall have one vote. Ad hoc members and proxies may not vote.

(3) [(4)] The PCC shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status and shall strive to consider the needs of populations with functional and access needs in their deliberations.

[(3) A member may not authorize another individual to represent the member by proxy.]

(4) [(5)] Minutes of each PCC meeting shall be taken by department staff or its contractors.

(A) A draft of the minutes approved by the presiding officer shall be provided to the department **[council]** and each member of the PCC within 30 days of each meeting.

(B) After approval by the PCC, the minutes shall be signed by the presiding officer.

[(m) Subcommittees. The PCC may establish subcommittees as necessary to assist the PCC in carrying out its duties.]

[(1) The presiding officer shall appoint members of the PCC to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer also may appoint nonmembers of the PCC to serve on subcommittees, subject to the approval of the Executive Commissioner of the Health and Human Services Commission.]

[(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the PCC.]

[(3) A subcommittee chairperson shall make regular reports to the PCC at each PCC meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.]

(1) [(n)] Statement by members.

(1) The commission, **[the council,]** the department, and the PCC shall not be bound in any way by any statement, recommendation, or action on the part of any PCC member

[or subcommittee member] except when a statement or action is in pursuit of specific instructions from the commission, **[council,]** department, or PCC.

(2) The PCC and its members **[or subcommittee members]** may not participate in legislative activity in the name of the commission, **[the council,]** the department, or the PCC except with approval through the department's legislative process. PCC members are not prohibited from representing themselves or other entities in the legislative process.

(3) A PCC member **[or subcommittee member]** should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A PCC member **[or subcommittee member]** should not disclose confidential information acquired through his or her **[committee]** membership.

(5) A PCC member **[or subcommittee member]** should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A PCC member **[or subcommittee member]** who has a personal or private interest in a matter pending before the department **[council]** shall publicly disclose the fact in a council meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the **[committee]** member has a direct pecuniary interest in the matter but does not include the **[committee]** member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(m) **[(o)]** Reports to the department **[council]**. The PCC shall file an annual written report with the department **[council]**.

(1) The report shall list the meeting dates of the PCC **[and any subcommittees]**, the attendance records of its members, a brief description of actions taken by the PCC, a description of how the PCC has accomplished the tasks given to the PCC by the department **[council]**, the status of any rules which were recommended by the PCC to the department **[council]**, and anticipated activities of the PCC for the next year.

(2) The report shall identify the costs related to the PCC's existence, including the cost of agency staff time spent in support of the PCC's activities and the source of funds used to support the PCC's activities.

(3) The report shall cover the meetings and activities in the immediately preceding fiscal year and shall be filed with the department **[council]** each January. The report shall be signed by the presiding officer.

(n) **[(p)]** Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a PCC member **[or subcommittee member]** may receive

reimbursement for the member's expenses incurred for each day the member engages in official PCC business if authorized by the General Appropriations Act or the budget execution process.

(1) No compensatory per diem shall be paid to PCC members **[or subcommittee members]** unless required by law.

(2) A PCC member **[or subcommittee member]** who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) Each member who is to be reimbursed for expenses shall submit to department staff the member's receipts for expenses and any required official forms no later than 14 days after each PCC meeting.

(4) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.